

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

David & Melody Freeman,
Petitioner-Appellants,

v.

Warren County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 12-91-0414
Parcel No. 01-000-07-0841

On September 13, 2013, the above-captioned appeal came on for telephone hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant David Freeman was self-represented. County Assessor Brian Arnold represented the Warren County Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

David and Melody Freeman are the owners of property located at 2745 135th Avenue, Carlisle, Iowa. The real estate was classified residential on the January 1, 2012, and assessed at \$133,800, representing \$49,400 in land value and \$84,400 in improvement value. This was a change in value from the January 1, 2011, assessment.

According to the property record card, Freeman's property is a double-wide manufactured home with 1152 square feet of living area, a full walk-out basement, of which 650 square feet is living quarters finish, and a 72 square-foot wood deck. It was built in 1973 and is a grade 4 in very good condition. Additionally, it has two garages: one is a detached frame building with 720 square feet, and the other is a detached metal building with 1500 square feet. The site is 1.9 acres.

The Freemans protested the assessment to the Warren County Board of Review on the following grounds: 1) that the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1); 2) the property was assessed for more than authorized by law under section 441.37(1)(a)(2); 3) there was an error in the assessment under section 441.37(1)(a)(4); and 4) that there was a downward change in value since the last assessment under sections 441.37(1)(b) and 441.35(2). In a re-assessment year, a challenge based on downward change in value is akin to a market value claim under section 441.37(1)(a)(2). *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Their error claim essentially asserted the property was over-assessed. The Freemans contended the correct value of their property was \$70,000, representing \$20,000 in land value and \$50,000 in improvement value.

The Board of Review denied their protest.

The Freemans then appealed to this Board reasserting their claims. They now assert the property's fair market value is \$86,600. This is the same amount as the 2010 assessment.

David Freeman testified he does not believe the property's valuation should have increased \$50,000 in three years. He stated that one of his garages is about to fall in, the roof is gone, and the siding is falling off. The windows in his house also need to be replaced again. Freeman noted the increase in assessment of \$23,400 between 2011 and 2012. He testified that the only improvement he has made since 2011 is the addition of another metal garage, which cost him \$16,000 to build. Additionally, he testified that he lives on top of a hill and his property is the last one on a dead end road. He believes there is no way he could sell his property for \$133,800.

When questioned about his basement, Freeman explained it has a wood foundation and a walk-out feature. Further, he testified he has stairwell access to his basement from the main floor. He explained he removed two closets and cut a hole in the floor and then built the stairwell to his basement.

Freeman listed three properties he considered comparable on his protest form to the Board of Review. All three are manufactured homes like his. The County Assessor provided partial property record cards and a spreadsheet on these properties. The following chart summarizes Freeman's comparable properties.

Address	Year Built	Living Area	Basement	Outbuildings	Assessed Value	AV/SF
Subject	1973	1152	Full/650 sf Finish; walk-out	2 Detached Garages	\$133,800	\$116.15
13457 Briggs Street	1980	2220	None	None	\$103,100	\$46.44
2664 Highway R63	1972	1456	Full/1050 sf Finish; no walkout	1 Detached Garage	\$110,900	\$76.17
17500 Elthon Street	1974	1128	Full/No Finish	2 Detached Garages/1 Carport	\$86,600	\$76.77

The property located at 13457 Briggs Street is nearly twice as large as the subject, and it has no basement or garage. These factors would contribute to its significantly lower assessed value per square foot. Ultimately, because of these differences we do not find this property reasonably comparable.

The property located at 2664 Highway R63 is 304 square feet larger and features over 1000 square feet of basement finish. For these reasons, we do not find it sufficiently similar.

Lastly, the property located at 17500 Elthon Street has the most similarities to the subject property. It is similar in year built, size, and has a full basement like the subject. Further, it offers similar utility in outbuilding storage. However, according to the Assessor this property differs from the subject in that it is located in a flood plain and has no basement finish.

Because we do not find two of the three properties sufficiently similar, Freeman is unable to prevail on an equity claim, which requires more than one comparable property for consideration. Further, even if Freeman had provided three similar properties for equity comparison, he must also provide a recent sales price or establish the market value of each property to determine a sales ratio.

Lastly, inequity can be proven by demonstrating different methods were used to assess similar properties, but Freeman did not make this assertion.

Freeman did not offer any evidence of the correct market value of the subject property as of January 1, 2012.

Brian Arnold testified for the Board of Review. He explained the Assessor's Office completed a countywide revaluation of residential land that resulted in the assessed value increasing on the subject property. Further, a new garage was built on the subject site. Finally, Arnold notes that sale prices of acreages increased in the Allen township, resulting in a map-factor increase for 2011.

After reviewing all of the evidence, Freeman has failed to provide, by a preponderance of evidence, that the subject property is inequitably assessed or over-assessed as of January 1, 2012.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

Id. at 579-580. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

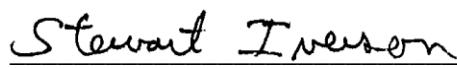
While Freemans provided three properties for comparison, we find only one of the properties is sufficiently similar to the subject. The Iowa Supreme Court has interpreted "representative number of comparable properties" to be more than one property. *Maxwell v. Shiver*, 257 Iowa 575, 581, 133

N.W.2d 709, 712 (1965). This “statutory requirement is both a jurisdictional prerequisite and an evidentiary requirement for bringing a claim of inequitable or discriminatory assessment before the board.” *Montgomery Ward Dev. Corp. by Ad Valorem Tax, Inc. v. Cedar Rapids Bd. of Review*, 488 N.W.2d 436, 441 (Iowa 1992). Furthermore, the word “shall” as used in the statute makes the listing of comparable properties mandatory as failing to do so would “directly frustrate” the sole function of the requirement, which is to enable the board to make a preliminary determination on the matter of equitability of assessment.” *Id.* Moreover, the evidence did not include the properties’ fair market values, which are required to complete an equity analysis. In this case, to prevail on an equity claim, Freemans would have had to compare prior year sales prices (in this case 2011) to the current year (2012) assessments of comparable properties. Finally, Freemans did not assert different assessing methods were used to value their property.

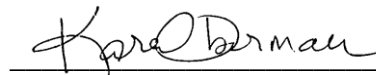
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property’s correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The Freemans did not provide any evidence of the fair market value of their property as of January 1, 2012.

THE APPEAL BOARD ORDERS the assessment of David and Melody Freeman’s property located at 2745 135th Avenue, Carlisle, Iowa of \$133,800 as of January 1, 2012, as set by the Warren County Board of Review is affirmed.

Dated this 17th day of October, 2013.


Stewart Iverson, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Member

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Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on October 17, 2013.

By: ☒ U.S. Mail ☐ FAX
 ☐ Hand Delivered ☐ Overnight Courier
 ☐ Certified Mail ☐ Other



Signature _____